IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

Crl.Rev.Pet.No. 3881 of 2006(A)

CMP.3301/2004 of JUDL.MAGISTRATE OF FIRST CLASS, NADAPURAM

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REVN. PETITIONER: COMPLAINANT

NARAYANI, W/O.BALAN,
EDAPPALLICHIRAYIL HOUSE, KUNNUMMAL AMSOM,
PATHIRIPPATTA DESOM,
VADAKARA, KOZHIKODE DISTRICT.

BY ADV. SRI.P.SANJAY
SRI.A.PARVATHI MENON
SRI.M.MUHAMMED SHAFI

RESPONDENTS: STATE
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1. STATE OF KERALA,
REP. BY THE CIRCLE INSPECTOR OF POLICE,
KUTTIADY, KOZHIKODE DISTRICT,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

2. VINEETHA R.KOTTAYI,
D/O.KRISHNAN, VINEETHA BHAVAN,
CHIRAYIL MEETHAL, KUNNUMMAL AMSOM,
PATHIRIPATTA DESOM, VADAKARA,
KOZHIKODE DISTRICT.

3. IRUSHIKESH, S/O.VINEETHA R.KOTTAYI,
VINEETHA BHAVAN, CHIRAYIL MEETHAL,
KUNNUMMAL AMSOM, PATHIRIPPATTA DESOM,
VADAKARA, KOZHIKODE DISTRICT.

4. KELPPAN, S/O.KADUNGOR,
KALLULAPARAMBATH HOUSE,
KAYAKKODI AMSOM, VADAKARA TALUK.

R1 BY PUBLIC PROSECUTORMR. C.M. KUMMAPPU
SRI.SANTHAN V.NAIR
SRI.SAJEEVAN KURUKKUTTIYULLATHIL
SRI.RAJESH PALAMATTAM

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08/03/2007, ALONG WITH CRMC NO. 3568 OF 2006 THE COURT ON 13/03/200 7PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.R.P.NO. 3881 OF 2006&
CRL.M.C.NO. 3568 OF 2006

DATED THIS THE 13th day of March 2007

ORDER

Crl.R.P.No.3881/2006 is filed by the complainant in C.M.P.No.3301/2004 in the file of the Judicial First Class Magistrate, Nadapuram for setting aside the order of the court below dismissing the private complaint filed by her under Section 190 (1)Cr.P.C. with respect to the same incident on the basis of which she has been implicated as an accused. Crl.M.C.No.3568/2006 is also filed by the same petitioner seeking to quash the proceedings in S.C.No.847/2004/Crime No.36/2004 of Kuttiadi police station in which she is one of the accused.

2. C.M.P.No.3301/2004 is the complaint against R2 to 4 alleging offences under section 323,324,427,308 read with Section 34 I.P.C. According to the complainant on 31-1-2004 at about 4 p.m., the accused/respondents 2 to 4 assaulted the complainant, her husband Balan , brother Mohanan and sister Girija with weapons and caused injuries to them. The sworn statement of herself, the three other injured and two eye witnesses were recorded by the court below. The court below also sent for a report of the police under Section 202 Cr.P.C. The doctor who recorded the wound certificate and three eye

witnesses were also examined. It is thereafter the court dismissed the complaint under Section 203 Cr.P.C.on unsustainable reasons, it is alleged.

3. The same petitioner has filed Crl.M.C.No.3670/2006 seeking to quash the proceedings instituted by the police against herself, her husband and brother Mohanan alleging that they have assaulted of the de facto complainant therein and his neighbour one Mrs. Vineetha, angered by the defamatory statements given by them to N.T.V. crew and thereby committed the offences punishable under Sections 323, 324, 427, 308 read with Section 34 I,.P.C. According to the petitioner, the compliant filed by the respondents is an absolutely false and frivolous one . According to her, it is after herself and her husband and brother and sister were admitted in the hospital and on getting information about the same, the second respondent got himself admitted in the Medical College Hospital, Kozhikode in order to create a false counter case about the incident. According to her, the media created a hype and the de facto complainant using his political influence have got the case registered and the compliant by the petitioner herein was referred. It is alleged that Mrs.Vineetha has been filing false and frivolous complaints prior to the incident, to all authorities like the Chief Minister, Home Minister, D.G.P., Collector,

Women Commission making baseless and unfounded allegations.

4. The lower court records and the C.D. were called for.

5. On a persual of the records and the order of the court below in C.M.P.No.3301/2004, I find that the infirmities alleged by the petitioner with respect to the impugned order of the court below cannot be sustained. The court below has not only considered the sworn statements of the complainant and the witnesses produced by her as well as the Doctor who recorded the wound certificates of the petitioner, her husband, brother and sister and also called for a report from the police vide Section 202 Cr.P.C. The report submitted by the police as well as the C.D.is to the effect that the private complaint filed by the petitioner is only a counterblast against the case registered against her husband, herself and her brother for assaulting the second respondent one Kelappan and his relative Mrs. Vineetha. It can also be seen from the report as well as in the C.D.statements that the independent witnesses mentioned in the complaint have stated before the police on questioning that they have not seen the incident. It is also seen from the wound certificates produced and from the statement of the Doctor that there are no external injuries on the complaint, on her husband and on her sister and only abrasion on the left leg is noted on her brother Mohanan. It is also mentioned in

the police report that Crime No.36/2005 of Kuttiadi police station was registered against the husband of the petitioner, the petitioner and her brother for attacking the 2nd respondent and Mrs.Vineetha and inflicting injuries to them as they were angered by the versions given by the 2nd respondent and Mrs.Vineetha to the N.T.V personnel who had visited the house of Mrs.Vineetha and it is immediately on the T.V.people leaving the place that the husband of the petitioner and her brother attacked the second respondent and Mrs.Vineetha. The lower court has also noted a number of contradictions in the sworn statements of the petitioner and her witnesses from the version in the compliant and the alleged cause mentioned in Ext.C1 to C4 wound certificates vide paras. 6, 7 and 8 of the order; and rightly so.

6. Counsel for the revision petitioner has cited the decisions in **Kewal Krishnan v. Suraj Bhan,** 1981 S.C.C.(Cri.)438 and **Prabhakaran Nair v. Joseph Chacko,** 1972 K.L.T.844 to stress the contention that the court is bound to take cognizance of the complainant if a prima facie case is made out and is not to make a meticulous appreciation of evidence and that the standard to be adopted in scrutinizing the evidence is not the same as the one which is to be kept in view at the stage of framing charge. All that the court has to see is whether or not there is sufficient ground for proceeding

which is the purport of the words under Section 203 Cr.P.C. I find that the above citations would not help the case set up by the revision petitioner. The court below has on a consideration of the recitals in the complaint, the sworn statement of the allegedly injured of the witnesses produced by them and of the Doctor who recorded the wound certificates, the injuries mentioned in the wound certificates, the alleged cause noted in the wound certificates and the report of investigation called for from the police vide Section 202 Cr.P.C. found that there is no sufficient ground for proceeding. In the circumstances, I find no reason to set aside the order of the court below which is a considered one supported by proper reasons.

7. The prayer in Crl.M.C.No.3568/2006 to quash the proceedings in S.C.847/2004 is based on the allegation that the case is a false one. Except raising the contention that she has not produced any materials to sustain the same. Hence, I find that the petition filed under Section 482 Cr.P.C. is devoid of merit. The Crl.M.C.No.3568/2006 is only to be dismissed.

Hence both the petitions are dismissed.

Sd/-

K.R.UDAYABHANU, JUDGE

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